IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.1116 of 2001.

Date of decision: 5.12.2006

Amrit Lal …**Petitioner**

Versus

State of H.P. & Another ….**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1] *no*

For the Petitioner: Mr.Sanjeev Kuthiala, Advocate.

For the Respondents:Mr.Rajan Dewan, Additional Advocate General.

Dev Darshan Sud,J.

The petitioner has approached this Court by way of the present writ petition seeking an appropriate writ for quashing the decision of the Financial Commissioner on Annexure P-7 whereby the recommendations made in favour of the petitioner by the Divisional Commissioner for retention of the land under the occupation of the petitioner, have been rejected.

It is averred by the petitioner that he is a landless person and his predecessor-in-interest had constructed a house on part of Khasra No.49/22 at Village Bhatar Khurd, Tappa Bajuri, Tehsil and

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***? Yes

District Hamirpur before the year 1968. He represented to the Panchayat for lease of land measuring 8 Bighas and 13 Biswas of land comprising in Khasra No.49/22 (old) which was described as "Banjar Kadim" in the record. The request of the petitioner was favourably considered by the Panchayat and he was granted the land on lease w.e.f. 19.9.1972. The lease was renewed subsequently from time to time. The petitioner alleges that classification of the land was subsequently changed from "Banjar Kadim" to "Barani Do Fasli" without any justification whatsoever. The petitioner further alleges that on the basis of promises made by the Pradhan of the Gram Panchayat, he made substantial improvements on the land. With the coming into force of the H.P. Village Common Lands Vesting and Utilization Act, 1974, the land vested in the Gram Panchayat and thereafter in the State of Himachal Pradesh. The petitioner submits that the land is not covered by the provisions Section 3(2)(a)(b)and(c) as a residential house had already been constructed on a part this land before commencement of the Act and the land or any portion thereof on which construction has been made, cannot be treated as land for the purposes of vestment in the State.

The petitioner further alleges that no determination has been made about the fact as to whether he was land less person, the land was to vest

in the State or not, whether it was excluded from the definition of land under the Act etc. Further, the fact that construction had been made much before the commencement of the Act and the user of the land did not render it "Barani-do-Fasli", has not been considered. Petitioner further submits that he has been paying the lease money regularly to the State and the lease granted to him by the Gram Panchayat from time to time has been extended by the State. According to learned counsel, this is an important fact. The lease as granted before operation of the Act was required to be considered after determination of all the relevant factors. His grievance is that his request for extension lease period made on 1.10.1986, has been rejected by the Deputy Commissioner-cum-Collector.

On 1.10.1992, the Patwari Halqua had made a report regarding illegal possession of the petitioner with respect to the suit land comprising in Khasra No.49/22 (old), now denoted by Khasra Nos.44/19/1, 45/19/1 and 46/19/1, kitta 3, situate in Mauza Bhater Khurd, Tappa Bajuri, Tehsil and District Hamirpur, measuring 8 Bighas 12 Biswas. Petitioner submits that the Patwari had made a tatima on the spot with the report that the petitioner had encroached upon some portion of the land, and a house had been built on Khasra No.45/19/1, measuring 0.18 Marlas. These facts are depicted in the spot inspection

conducted by the Assistant Collector Ist Grade on 16.6.1993. A recommendation was made by the Collector that the land on which the house had been constructed should be transferred in the name of the concerned Panchayat which would regularize the possession of the petitioner.

An appeal was preferred by the petitioner to the Sub Divisional Officer (Civil), Hamirpur, challenging this order on number of grounds with the alternate plea that the petitioner had become owner by way of adverse possession etc. This appeal was dismissed.

A revision petition under Section 17 of the H.P. Land Revenue Act was filed before the Commissioner, Mandi, who, vide his order dated 22.1.1998, held that the house of the petitioner had been constructed between 1968 to 1975 and has been in his possession since then. On going through the record, the Divisional Commissioner further concluded that the trial Court had committed an illegality by not examining the copy of the tatima placed on the file, and had not properly appreciated the fact on record. The revision petition was accepted and the case was, therefore, recommended to the Financial Commissioner for appropriate orders.

The Financial Commissioner (Appeals),in his order dated 30.12.2000, has held that since the land was common land (Shamlat Land) before it vested in the

State Government, the eviction order passed against the petitioner is in order and no interference is called for.

The petitioner has relied upon a number of judgments including judgment of this Court passed in ***Ram Saran*** Vs. ***State of H.P. and others***, ***1996 (2) S.L.J. 1213*** to show that his possession was legal and the action of the respondents was not legal and in accordance with law. The petitioner also submits that the relevant facts as to whether the lease was valid, it was properly dealt with under the provisions of Section 4 of the Act and whether it was excluded from the definition of land in accordance with law, have not been considered by the Financial Commissioner in his decision. It is further submitted that substantive reasons for disagreeing with the recommendations made by the Divisional Commissioner, have not been given. It is also submitted that during the pendency of the petition, the Himachal Pradesh Village Common Lands Vesting and Utilisation (Amendment) Act, 2001, introduced far reaching changes in the Act. The amendments made are beneficial and would help the petitioner in retaining the land in his possession. I find it unnecessary to pronounce upon the question raised by the learned counsel for the parties, as I am remanding the matter to the Financial Commissioner for decision afresh in accordance with law.

On going through the order Annexure P-7, I find force in the contentions urged on behalf of the petitioner. I find that the Financial Commissioner has not considered the submission of the petitioner to the effect, as to whether the land in question could or could not be allotted to him, whether he was a landless person, the effect of grant of such land before the commencement of the Act and treatment of the lease after the commencement of the Act in terms of Section 4 of the Act. Of course, the question of the amendment in the Act could not be the subject matter of proceedings before the Financial Commissioner as such amendment was made in the year 2001.

In these circumstances, I quash and set aside Annexure P-7 and direct that the matter be decided afresh by the Financial Commissioner in accordance with law. The question of the effect of the amendment in the Act and the Rules, shall also be considered by the Financial Commissioner while disposing of the case.

No observation has been made on merits on rival contentions of the parties. The Financial Commissioner shall be at liberty to decide the matter in accordance with law. The writ petition is disposed of. There shall be no order as to costs.

December 5, 2006 **(Dev Darshan Sud)**
(ss) **Judge.**